

**IN THE CHANCERY COURT OF LEWIS COUNTY  
AT HOHENWALD, TENNESSEE**

In Re: Sentinel Trust Company

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Case No. 4781

**OBJECTION TO MOTION OF COMMISSIONER-IN-POSSESSION AND  
RECEIVER FOR APPROVAL OF TRANSFERS OF SENTINEL TRUST  
COMPANY IN LIQUIDATION'S FIDUCIARY POSITIONS TO SUCCESSOR  
FIDUCIARIES**

Now comes Madison Health Partners, LLC, ("Madison") Beckley Health Partners, LLC, ("Beckley"), Athens Health Partners, LLC, ("Athens"), Barboursville Health Partners, LLC, ("Barboursville"), Jackson Health Partners, LLC, ("Jackson") and Gallia Health Partners, LLC, ("Gallia") (collectively, the "Borrowers") by and through Chancellor Health Partners, Inc. ("Chancellor"), the managing member of the Borrowers, and objects, on behalf of the Borrowers to the Motion of the Commissioner-in-Possession and Receiver for Approval of Transfers of Sentinel Trust Company in Liquidation's fiduciary positions to successor fiduciaries (the "Motion"). Chancellor does not object to the appointment of the successor trustees or the contemplated transfer of files to such successor trustees. Chancellor does, however, object to the additional relief sought in the Motion.

**Background**

1. Sentinel Trust Company ("Sentinel") is a Tennessee corporation, located in Hohenwald, Lewis County, Tennessee, engaged in various fiduciary activities.
2. Sentinel served as the Trustee with respect to various Trust Indentures by and between Sentinel and Madison, Beckley, Athens, Barboursville, Jackson and Gallia.

3. In accordance with and pursuant to the terms of the Trust Indentures, certain trust funds and trust accounts were established to be held by Sentinel. Prior to May 18, 2004, the Borrowers had individually and collectively deposited in trust \$2,459,545.04 (the "Borrowers' Trust Funds") with Sentinel which have not been disbursed pursuant to the terms of the Trust Indentures.

4. On May 3, 2004, the Commissioner of the Tennessee Department of Financial Institutions ("Commissioner") issued an Emergency Cease and Desist Order ("Order") directing Sentinel to cease and desist from engaging in unsafe and unsound banking practices.<sup>1</sup> The Order found that Sentinel had used pooled fiduciary funds to provide operating capital for non-related defaulted bond issues, thereby creating a fiduciary cash shortfall that exceeded Sentinel's operating capital. The Order also found that Sentinel failed to reconcile its fiduciary cash and corporate cash accounts in a timely and accurate fashion and to keep accurate books and records. Importantly, the Order specifically ordered Sentinel to immediately cease and desist from:

"Engaging in the practice of using the pooled fiduciary funds to provide operating capital for non-related bond issues; . . ."

The Order also required Sentinel to make an infusion of \$2,000,000 in capital by May 17, 2004 to partially replenish the fiduciary pooled demand deposit account and submit a capital plan outlining plans to completely replenish the fiduciary pooled demand deposit account.

5. When Sentinel failed to provide the Commissioner with additional capital or a capital plan as required by the Order, the Commissioner took emergency possession of

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<sup>1</sup> A copy of this Order was attached as Exhibit 1 to the Commissioner's Petition for Approval of Payments to Bondholders, filed May 27, 2004.

Sentinel pursuant to Tenn. Code Ann. §§ 45-2-1502(b)(2) and (c)(1) and the same day, appointed Receivership Management, Inc. as the Receiver.

6. Since taking possession of Sentinel, the Commissioner, through his staff and the appointed Receiver, determined that Sentinel had a fiduciary cash shortfall in an amount ranging from \$7,612,218 to \$8,430,722 as of May 18, 2004.<sup>2</sup> Further, the Commissioner determined that Sentinel was insolvent in an amount of at least \$6,225,700.

7. As a result of these determinations, on June 18, 2004, the Commissioner issued a Notice of Liquidation of Sentinel in accordance with the provisions of Tenn. Code Ann. §§ 45-2-1502(c)(2) and 1504.

8. In July, 2004, Madison , Beckley, Athens, Barboursville, Jackson, and Gallia and Ashland Assisted Living, Inc. ("Ashland") and Lutheran Social Services of Central Ohio, Inc., ("LSS"), filed a motion to intervene and requested the entry of an Order authorizing and directing Receivership Management, Inc.'s (the "Receiver") to transfer to The Bank of Oklahoma ("Successor Trustee") property (excluding funds which were on deposit in the Pooled Trust Account)<sup>3</sup>; and, to take any other action necessary to duly assign, transfer and deliver to the successor Trustee all property and records (including without limitation, the Register and any cancelled Bonds) held by Sentinel.

9. The Receiver initially indicated that she would to cooperate in the transfer to the Successor Trustee and would not oppose the motion. However, at the last minute, a response was filed objecting to the motion. Although contrary to the express terms of

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<sup>2</sup> See Commissioner-in-Possession's Petition for Approval of Payments to Certain Bond Holders, together with the attached Affidavit of Wade McCullough.

<sup>3</sup> Your Movants recognize the inability of the Receiver to currently distribute trust funds on deposit in the SunTrust Pooled Trust account, but reserve all their rights to receive a distribution from the estate at a later date.

the various Indenture Trusts, the Receiver argued that she had a right to market and sell Sentinel's fiduciary responsibilities as a complete portfolio. The Receiver's goal was to generate a monetary gain for the estate, even if it meant impairing the contractual rights of the Borrowers, Bond Issuers and Bondholders.

10. The Receiver's plan was ill conceived, improvident and demonstrated a lack of even the most basic understanding of the bond industry. It is not surprising that the Receiver's actions have drawn scrutiny and significant opposition. The Receiver's actions, which thwarted the efforts of the Bond Issuers and Borrowers, to promptly accomplish a transfer of Sentinel's continuing fiduciary obligations to a successor trustee, was in direct violation of the express language contained in the the Trust Indentures and state law. The delay has negatively impacted the Borrowers, Bond Issuers and Bond Holders alike.

11. The Receiver and her counsel were informed that as a practical matter, no value would be realized by the estate from the bid process. Instead, their plan would ultimately result only in a delay of the transfer of Sentinel's fiduciary obligations and increased costs by the receivership estate. The Receiver and Commissioner decided to ignore reality and instead, follow the rainbow in hopes of recovering the nonexistent "pot of gold".

12. On August 18, 2004, the Court denied Chancellor's motion, voided the appointment of the Bank Oklahoma as the Successor Trustee and authorized the Receiver to set into motion a bid process.

13. On September 22, 2004, the bid deadline established by the Receiver, passed. It would surprise no one familiar with the bond industry that the Receiver received no bids.

#### **The Receiver's Motion**

14. According to the Motion, the Receiver claims that the transfer to the successor trustees is **now** in the best interest of the Sentinel Trust estate because 1) it relieves the receivership of much of the expense of running the day-to-day operations of the trust company and 2) it provides all involved with the bond issues with a secure entity to serve in the fiduciary role. It is outrageous that the Receiver has just now come to this realization. Indeed, had the Receiver promptly transferred Sentinel's fiduciary responsibilities at the commencement of the liquidations proceedings, Sentinel would have saved considerable expense and not met such contentious opposition.

#### **The Bond Issuers Objection**

15. First, the Motion conditions the transfer to successor trustees upon a "written agreement of reasonable terms and conditions, substantially the same as those with SunTrust." At the same time, both the Commissioner and Receiver fail to disclose the terms of such agreement which the successor trustees will be required to sign. It appears from the Motion that only SunTrust is actively involved in negotiations. The agreement will apparently be presented to the Court for approval at the November 15<sup>th</sup> hearing, without anyone else having had an opportunity to review or have input. Unless the agreement has been reached with all of the designated successor trustees, imposing

additional conditions which are outside the trust documents, may discourage a successor trustee from assuming the fiduciary obligations by December 15, 2004 deadline.

16. Secondly, the Motion asks that December 15, 2004 be the established date upon which Sentinel ceases to be the fiduciary for bond issues. However, a condition to the transfer to a successor trustee is the payment of certain fees and expenses which the Receiver contends are due to Sentinel. Chancellor and the Borrowers do not agree with the amounts which the Receiver has set forth in Exhibit I, attached to the Motion. Because the claimed amounts have been set forth in summary fashion, without any documentation or backup, Chancellor and the Borrowers are unable to reconcile the amounts claimed by the Receiver. Nonetheless, the Motion effectively seeks a judgment or judicial decree finding that the amounts so stated are accurate and must be paid, without the Court holding any evidentiary hearings concerning the amount, priority or validity of the Receiver's claim. Borrowers believe that they have a legitimate right of right of set-off with regard to any monies claimed by the Receiver. Yet, the Commissioner and Receiver seek to eliminate any realistic chance for parties to dispute the amounts and eliminate substantive rights or defenses (i.e., set-off) which the parties may have, without any due process. If the relief requested under the Motion is granted, as of December 15, 2004, Borrowers, Issuers and Bondholders alike face the possibility of having no fiduciary appointed, unless they have paid amounts demanded by the Receiver.

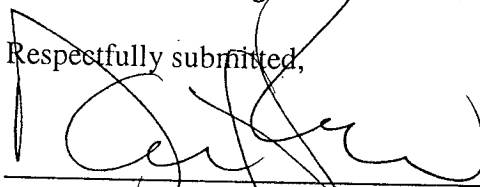
17. With regard to those parties who have amount classified as *de minimums* sums on deposit with Sentinel, the Receiver should be required to provide credited for the benefit of the payer, directly against any fees or expenses asserted by the Receiver.

18. The Motion seeks to limit which parties may file proofs of claim and to whom future notices will be sent to the successor fiduciary. Borrowers have a significant interest in the pooled trust account. Indeed, as indicated, prior to May 18, 2004, the Borrowers had deposited \$2,459,545.04 with Sentinel. In accordance with prior orders of this Court, the Borrowers submitted claim information to the Receiver. There is no basis to exclude the Borrowers, who an absolute vested interest in and to what ultimately happens to the pooled trust account, from participating in the process and receiving future notices. Indeed, Chancellor and the Borrowers have waited patiently for a detailed accounting concerning recoveries from defaulted bond deals. After recovery of fees and expenses advanced by Sentinel, the balance of such proceeds are to be utilized to replenish the deficiency in the pooled trust account. While the Receiver agreed to provide detailed information, as of this date, none has been received.

#### Conclusion

For the foregoing reasons, the Borrowers and Chancellor respectfully request this Court grant the Motion in part, but deny the additional relief sought as referenced above.

Respectfully submitted,



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